

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE CONSUMER ADVOCATE

Classification and Fees for Confirm)

Docket No. MC2002-1

OFFICE OF THE CONSUMER ADVOCATE
COMMENTS ON NOTICE OF INQUIRY NO. 1
CONCERNING PROPOSED DMCS CHANGES
(June 7, 2002)

By Notice of Inquiry No. 1 (NOI No. 1)¹ the Commission invited comments by May 30, 2002 on the DMCS language it has proposed as an alternative to the DMCS language presented by the Postal Service in its application in this docket. Pursuant to joint motion of the Postal Service and the Office of the Consumer Advocate (OCA),² the Presiding Officer granted an extension of time until June 7, 2002 to respond to NOI No. 1.³

The Commission's alternative language is designed to serve several objectives: to eliminate some unnecessary vagueness in the Postal Service's DMCS proposal, to conform the Postal Service's language more closely to the existing DMCS, and to meet other objectives. The Commission notes that its version retains much of the substance proposed by the Postal Service and sponsored by witness Kiefer (USPS-T-5 at 12) but that it proposes to describe the Confirm® service more compatibly with other services listed in the DMCS. The OCA hereby responds with the following comments.

¹ "Notice of Inquiry No. 1 Concerning Proposed DMCS Changes," May 16, 2002.

² "Joint Motion of United States Postal Service and Office of the Consumer Advocate for Extension of Time to Respond to Notice of Inquiry No. 1, and Interim Report on Settlement Discussions," May 29, 2002.

Currently the participants are in the process of settlement discussions in this docket and, as reported previously to the Commission,⁴ a tentative settlement has been reached subject to drafting the settlement document. It is anticipated that a settlement agreement will be filed shortly with the Commission.

NOI No. 1 requested that any settlement agreement address the issues raised by the Commission's proposed DMCS alternative. The OCA has discussed the Commission's proposal with the Postal Service as part of settlement discussions with the hope of including a united DMCS proposal within the settlement agreement. The Postal Service has prepared alternative DMCS language that the OCA and other parties have reviewed. The Postal Service will file today its proposed alternative modifications to the Commission's DMCS language in NOI No.1 which incorporate some additional changes agreed to by the participants. The OCA concurs with those modifications, although in a few instances, the Commission's proposed DMCS language seems clearer and less vague than that preferred by the Postal Service.

The OCA believes that the Commission's proposals significantly improve the overall presentation of the Confirm® service in the DMCS. In several instances the terms of the service and the available alternatives for subscribers are clarified or expanded. The OCA therefore fully supports the Postal Service's adoption of much of the Commission's proposed structure and language for Section 991 Confirm® service. These adjustments will make the document more user friendly and better explain the Confirm® service. The Postal Service fails to incorporate several of the drafting

³ "Presiding Officer's Ruling Granting Extension of Time and Establishing Procedural Schedule," Ruling No. MC2002-1/1, May 30, 2002.

changes proposed by the Commission for reasons the Postal Service explains in its own comments. Those particular areas are discussed below.

The OCA is of the opinion that the language proposed by the Commission for section 991.11 – that “Scan data . . . shall remain available to subscribers for a minimum of 15 days” – ensures that the Postal Service will keep the data available, thereby preserving for purchasers one of the value elements of the service. Without the language, as the Postal Service proposes, the Postal Service would be able to shorten that availability period and, as a result, the service would not be as valuable to the subscribers as the one for which they subscribed.

If the availability period is curtailed on short notice by the Postal Service, the subscribers may not have the opportunity to adjust their internal review procedures of scans or may no longer be able to utilize the service effectively. As the Postal Service states, Confirm® is not a service based on a per piece rate and so the subscribers do not have the option of immediately terminating use of the service if the terms become unsatisfactory inasmuch as they pay the full fee at the beginning of the subscription. The scan data is the primary service subscribed for and its availability to subscribers is the single most significant feature of the service. The period that the data is available to subscribers is an integral part of the subscription agreement that would be recognized by the Commission’s proposed language for DMCS section 991.11.

Despite some misgivings about the Postal Service’s omission of the 15-day minimum in its Alternative DMCS Language (filed this date), OCA has been reassured by the representative of likely Confirm® customers that the customers are not

⁴ “Joint Motion of United States Postal Service and Office of the Consumer Advocate for Extension of Time to Respond to Notice of Inquiry No. 1, and Interim Report on Settlement Discussions,” May 29,

concerned about omitting this requirement from the DMCS. In the interest of achieving a prompt settlement of the instant proceeding, OCA has agreed to the Postal Service's alternative language.

Most significantly, the Commission lists in section 991.41 those "Other Services" that may be combined with Confirm®. This list is too limiting, according to the Postal Service, and may restrict the Confirm® service more than intended by preventing the Postal Service from making future offerings of special services not listed by the Commission without filing a new classification request.

The Postal Service's language in section 991.2 stating that "Confirm neither precludes nor requires any other special services" is broad enough to allow the availability of other services to be determined by the terms of those services. This language does not provide the Postal Service the opportunity to independently or arbitrarily withhold other services that may be combined with Confirm®; instead other services may be combined with Confirm® depending upon the terms of those services as set forth in the DMCS. Therefore, OCA is of the opinion that customer interests will not be diminished by the Postal Service's Alternative DMCS Language, and OCA is able to agree to it as part of the settlement.

The Commission's proposal generally re-orders and re-numbers much of the USPS language and adds a few additional pieces of information. The Commission's proposal appears very different from the USPS language because it expands the Confirm® definition section by adding sections 991.12, 991.121, 991.122, and 991.123. In fact, the additional definitional sections essentially list the three types of available

2002. See also, "Second Settlement Report of the United States Postal Service," June 6, 2002.

service that the USPS had included later in four of the subsections of the "Availability" section 991.2, as sections 991.24-243.

The Commission also expands the description of each of the three types of subscriptions to indicate that additional ID codes may be licensed "for a term of three months or until expiration of the subscription, whichever occurs first." The Postal Service incorporates this proposal and the OCA agrees.

The Commission's proposal adds three additional pieces of information.

1. The Commission's "Requirements" section includes a new section 991.32 stating that qualifying mail must bear PLANET and POSTNET barcodes, as specified by the Postal Service. This language is not included in the Postal Service alternative version because, according to the Postal Service, the origin mail does not require a POSTNET barcode. OCA is of the view that the Commission's proposed language that qualifying mail must bear PLANET and POSTNET barcodes "as specified by the Postal Service" gives the Postal Service the latitude to dispense with the requirement of a POSTNET barcode, but the Postal Service's omission of the language is not a deterrent to OCA's disposition to reach a settlement agreement.

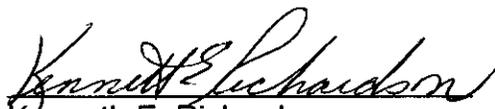
2. The Commission's language also includes a new section 991.33 stating the requirements for submitting an Advance Shipping Notice (ASN) that are not included in the Postal Service language. The ASN is initially necessary as a management tool of the Postal Service. The OCA defers to the views of the Postal Service as to the information it needs to commence scan service and to track Confirm® subscriber mailings.

3. The Commission's version includes a new subsection under the "Fees" section stating that a Gold subscription may be upgraded to a Platinum subscription at any time prior to expiration of the Gold subscription without extending the initial term of the subscription by paying the difference in the two fees. The Postal Service has accepted this proposed language and the OCA agrees.

OCA's position on the type of statements that must be included in the DMCS is that elements of service that the Postal Service has indicated will be provided as part of an offering should be stated explicitly. This protects the purchaser from being denied a portion of the service recommended by the Commission by not giving the Postal Service the discretion to eliminate an element of service. On the other hand, the omission of explicit statements of requirements that may be imposed on purchasers that the Commission prefers, but that the Postal Service would omit, would likely work only to the disadvantage of the Postal Service. For example, if the Postal Service later seeks to impose a such a requirement on a purchaser that is not included in the DMCS, there is a chance (albeit remote) that the purchaser might file a complaint under 39 U.S.C. §3662 contending the Postal Service was providing a service inconsistent with the DMCS and therefore not "in accordance with the policies" of title 39. Nevertheless,

the failure to include in the DMCS a requirement upon customers tends to expose the Postal Service to harm, not the customer, so OCA would view such an omission as a choice that may be left to the Postal Service.

Respectfully submitted,

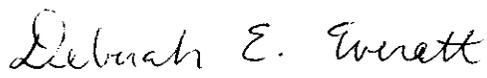

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Rule 12 of the rules of practice.


Deborah E. Everett

Washington, D.C. 20268-0001
June 7, 2002